

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
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U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

PHILIP J. CHARVAT,

Plaintiff,

v.

NMP, LLC, et al.

Defendants.

Case No. 2:09-cv-209

Judge Sargus


Magistrate Kemp

**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT BY THE COURT**

NOW COMES PLAINTIFF PHILIP J. CHARVAT, *Pro Se*, pursuant to Federal Rule of Civil Procedure 15(a), and hereby moves the Court for an Entry of a Default Judgment in Plaintiff's favor on the 8 counts that he has asserted against DEFENDANT MEDIA SYNERGY GROUP, LLC in Plaintiff's Third Amended Complaint for Money Damages, Declaratory Judgment, and Injunctive Relief.

The reasons why the Court should grant this Motion are set forth in the following Memorandum in Support of Motion and attachments hereto.

Respectfully submitted,

  
Philip J. Charvat, *Pro Se*  
636 Colony Drive  
Westerville, Ohio 43081-3616  
614-895-1351  
PJCharvat@Hotmail.Com

## **MEMORANDUM IN SUPPORT OF MOTION**

### **I. INTRODUCTION AND BACKGROUND FACTS**

Plaintiff's claims arise from the dozens of unwanted telemarketing calls placed to Plaintiff's residential telephone number offering for sale memberships in the "Official NASCAR Members Club". Each of these calls flagrantly disregards and violates well-established federal and Ohio laws prohibiting such calls, and almost all of them were made in direct defiance of Plaintiff's explicit request during one of the earliest calls that his home not receive any more of these telemarketing calls. (See, generally, Plaintiff's Third Amended Complaint)

### **II. LAW AND ARGUMENT**

#### **A. Because Defendant Has Failed to Timely Respond to Plaintiff's Third Amended Complaint, an Entry of Default Judgment Should be Granted by the Court.**

Default judgment is entered appropriately in a plaintiff's favor when a defendant fails to file an answer or otherwise defend against an action. Fed. R. Civ. P. 55. Rule 55 provides, in pertinent part, that:

(a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk--on the plaintiff's request, with an affidavit showing the amount due--must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(b)(2) *By the Court.* In all other cases, the party must apply for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If

the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. The court may conduct hearings or make referrals--preserving any federal statutory right to a jury trial--when, to enter or effectuate judgment, it needs to:


- (A) conduct an accounting
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

Here, the facts are simple and straightforward, and the legal implications of these facts are also beyond dispute. Plaintiff filed his Third Amended Complaint for Money Damages, Declaratory Judgment and Injunctive Relief on February 6, 2012, and Defendant Media Synergy Group, LLC was served via ordinary mail service on February 6, 2012. Therefore, pursuant to Fed. R. Civ. P. 12(a) and S.D. Local R. 4.2(c), such Defendant's answer or other responsive pleadings or motions were due to be filed on March 1, 2012. However, as of the date of this Motion, Defendant Media Synergy Group, LLC has failed to file an answer, motion or other pleading in response to the Third Amended Complaint. Accordingly, Plaintiff is entitled under the law to a judgment by default.

### **III. CONCLUSION**

For all the foregoing reasons, Plaintiff respectfully moves the Court to enter a default judgment against Defendant Media Synergy Group, LLC.

Respectfully submitted,

  
Philip J. Charvat, *Pro Se*  
636 Colony Drive  
Westerville, Ohio 43081-3616  
614-895-1351  
PJCharvat@Hotmail.Com

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and accurate copy of the foregoing document was served upon the Defendant below, by U.S. Mail, this 26<sup>th</sup> day of March, 2012:

Media Synergy Group, LLC  
c/o Louis G. Anton, Registered Agent  
14501 Higheate Hill Ct.  
Chesterfield, VA 23832

  
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Philip J. Charvat, *Pro Se*